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Admitted Pursuant to LR IA 11-2

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Attorneys for Defendant Seth Wittner

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SETH WITTNER,

Defendant.

Case No. 17-Cr.-05-KJD-NJK

Related Case No. 18-Cv.-1085-KJD

**UNOPPOSED MOTION FOR EXTENSION
OF TIME TO FILE AMENDED SECTION
2255 BRIEFING; DECLARATION OF
COUNSEL IN SUPPORT**

1 **MOTION**

2 Defendant Seth Wittner, by and through his counsel, respectfully moves to
3 establish a new deadline of January 31, 2020 to file amended briefing and supporting
4 materials under 28 U.S.C. § 2255.
5

6 The good cause for this motion is set forth in the attached declaration of counsel.
7 As set forth therein, the United States does not oppose this motion.

8 Respectfully submitted,

9 DATED: December 9, 2019

LAW OFFICE OF JAY A. NELSON

10 */s/ Jay A. Nelson*
11 JAY A. NELSON
12 637 SW Keck Drive, No. 415
13 McMinnville, OR 97128

14 Attorney for Defendant Seth Wittner

15
16 IT IS SO ORDERED.

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18
19 THE HONORABLE KENT J. DAWSON
20 UNITED STATES DISTRICT JUDGE

21 DATED: 12/13/2019
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I, Jay A. Nelson, declare under penalty of perjury as follows:

1. I serve as counsel to Defendant Seth Wittner in the above-captioned matter. I am admitted to practice in this case under LR IA 11-2. Except where otherwise expressly noted, I state the following on personal knowledge and if called as a witness could testify competently thereto.

2. On September 17, 2019, Mr. Wittner moved to (i) enter my substitution as his attorney of record, and (ii) set a deadline of December 13, 2019 to file amended briefing under 28 U.S.C. § 2255. ECF Nos. 38-39. On November 27, 2019, the Court granted those requests. ECF Nos. 40-41. For the reasons set forth below, I now respectfully ask the Court to establish a new deadline of January 31, 2020 for Mr. Wittner to file his amended section 2255 materials.

3. As part of Mr. Wittner's September 17, 2019 scheduling motion, I estimated that I would be able to prepare and file Mr. Wittner's amended briefing by December 13, 2019. ECF No. 39. In large part, that remains true: as of this writing, I have substantially completed draft filings on Mr. Wittner's behalf, and have provided them to Mr. Wittner for his review and assessment. The following circumstances, however, present good cause supporting this extension request.

4. First, despite the exercise of diligence, I have been unable to schedule an unmonitored attorney-client telephone call through the Bureau of Prisons to discuss Mr. Wittner's draft filings with him. Notwithstanding numerous attempts since at least November 18, 2019, I have not received so much as a call back from Mr. Wittner's unit team. In order to permit Mr. Wittner's meaningful participation in these proceedings, I

1 respectfully request additional time to conduct at least one privileged attorney-client
2 teleconference with him.

3 5. Second, prior to submitting Mr. Wittner's amended filings for the Court's
4 consideration, I have asked government counsel, Assistant United States Attorney Tony
5 Lopez, for an opportunity to review, *inter alia*, the government's discovery production
6 in this case, including both non-contraband and contraband items. In response, Mr.
7 Lopez expressed a preference to wait until the Court finalized my substitution as counsel
8 of record. Because the Court did not approve my substitution until November 27,
9 however, I have had inadequate time to coordinate my review with Mr. Lopez—
10 including an ongoing discussion about whether I will conduct my review in Oregon—and
11 then to make any appropriate adjustments to Mr. Wittner's amended filings.
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13 6. I have addressed this extension request with Mr. Lopez. Mr. Lopez responded
14 that he does not oppose this motion.
15

16 7. In light of the foregoing, I ask the Court to recognize the diligence and
17 substantial need supporting this request, and to enter an Order establishing a new
18 deadline of January 31, 2020 for Mr. Wittner to file his amended section 2255 briefing
19 and supporting materials.
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21 I declare under penalty of perjury of the laws of the United States that the
22 foregoing is true and correct.
23

24 DATED: December 9, 2019

/s/ Jay A. Nelson
JAY A. NELSON